

REMARKS

Claims 1-22 are currently pending in this application. Reconsideration is respectfully requested in light of the following remarks.

The Examiner rejected the inventor declaration for failing to comply with 37 CFR 1.63. The Examiner alleges the inventor declaration is defective because the declaration states that the inventor acknowledges a duty to disclose information which is material "to the examination of the application" rather than information material "to patentability" as defined in Section 1.56. Applicants respectfully disagree with the Examiner's rejection of the inventor declaration.

Applicants submit that 37 CFR section 1.63 (see Exhibit A) previously required an acknowledgement of Applicant's duty to disclose information that is "material to the examination of the application". However, in a "Duty of Disclosure" rule change published at 1135 OG 13 (February 4, 1992), Rule 63 was changed so that its language tracked the "material to patentability" language of Rule 56 (See Exhibit B).

In making this change, and in reply to Comment 38 at 1135 OG 17 (see Exhibit C), the Office stated that the averments in oath or declaration forms presently in use that comply with the previous section 1.63 or 1.175 will also comply with the requirement of the new rules. The Office also stated, "Therefore, the Office will continue to accept the old oath or declaration forms as complying with the new rules." Applicants therefore submit that the as filed inventor declaration which complies with the requirements of Rule 63 prior to the 1992 rule change also complies with the requirements of the current rule and should be accepted.

Moreover, the first page of the Duty of Disclosure Rulemaking (see Exhibit B) as published at 1135 OG 13 (February 4, 1992) explains that an Applicant for a patent also has a duty of candor and good faith in dealing with the Patent Office and that this duty is broader than the duty to disclose information material to patentability. Therefore, Applicants submit that the duty to disclose information material to the "examination" of the application (which includes the duty of candor and good faith) as recited in the inventor declaration for the subject application is broader than and includes the duty to

disclose information material to the patentability of the application as required by the Examiner.

Applicants therefore submit that the as filed inventor declaration encompasses a broader duty of disclosure and complies with the requirements of 37 CFR 1.63. Applicants therefore request acceptance of the inventor declaration as filed and withdrawal of this objection.

The Examiner rejected claims 1, 2, 4, 6, 7, 15-19 and 22 under 35 U.S.C §102(e) as being anticipated by U.S. Patent 6,445,952 to Manrodt et al. Applicants respectfully traverse this rejection.

Applicants' claimed invention as recited in independent claims 1, 15, 19 and 22 is directed towards a method and corresponding apparatus for determining displacement of an electrode. For example independent claim 1 recites a method comprised in part by delivering an electrical signal to a first position using a first electrode located in or adjacent to a first cardiac chamber... sensing a potential generated by the delivered electrical signal using a second electrode located at a second position in or adjacent to a second cardiac chamber and determining a displacement of the second electrode based, at least in part, on the sensed potential. (Underlining added for emphasis only). Applicants respectfully submit that Manrodt et al. do not disclose or suggest the recited claim elements.

Rather, as noted by the Examiner, Manrodt et al. disclose a system and method for detecting micro-dislodgment at a heart tissue/pacing lead interface not the displacement i.e. distance the electrode in one chamber moves in response to an excitation in another chamber as recited in the claimed invention. Moreover, the Examiner argues that the dislodgement test of Manrodt et al. delivers an electrical to the atrium and after a short delay, senses the delivered electrical signal in the ventricle. Applicants, respectfully disagree.

The sections pointed to by the Examiner, namely col. 10, lines 54-65, disclose that the micro-dislodgment testing procedure is initiated by pacing the atrium, and after a relatively short time delay after the atrium pace event, but prior to any appreciable contraction of the right ventricle, the right ventricle is paced. A pacing threshold measurement is then taken using the tip electrode embedded in the right ventricle wall.

Thus, the system of Manrodt et al. does not disclose or in any way suggest delivering an electrical signal to a first position using a first electrode located in or adjacent to a first cardiac chamber... and sensing a potential generated by the delivered electrical signal using a second electrode located at a second position in or adjacent to a second cardiac chamber as recited in the claimed invention.

For at least these two reasons Applicants respectfully submit that claims 1, 15, 19 and 22 are novel and non-obvious over Manrodt et al. and are allowable. Applicants further submit that claims 2, 4, 6 and 7 and claims 16-18 that depend from claims 1 and 15 respectively are allowable as are claims 1 and 15 and for additional limitations recited therein.

The Examiner rejected claims 3, 5, 20 and 21 under 35 U.S.C §103(a) as being unpatentable over Manrodt et al. Applicants respectfully traverse this rejection.

In view of the foregoing analysis of independent claims 1, 15 and 19 over Manrodt et al., Applicants believe that the rejections of dependent claims 3, 5, 20 and 21 under §103 is rendered moot as claims 3, 5, 20 and 21 depend from allowable independent claims 1, 15 and 19 respectively. Applicant, therefore, requests withdrawal of the rejection of claims 3, 5, 20 and 21 under 35 U.S.C. § 103(a).

The Examiner rejected claims 8 and 9 under 35 U.S.C §103(a) as being unpatentable over Manrodt et al. in view of U.S. 4,173,230 to Digby and claims 10-14 under 35 U.S.C §103(a) as being unpatentable over Manrodt et al. in view of U.S. Publication 2003/0204212 to Burnes et al. Applicants respectfully traverse these rejections.

In view of the foregoing analysis of independent claim 1 over Manrodt et al., Applicants believe that the rejections of dependent claims 8, 9 and 10-14 under §103 is rendered moot as claims 8, 9 and 10-14 depend from allowable independent claim 1. Applicant, therefore, requests withdrawal of the rejection of claims 8, 9 and 10-14 under 35 U.S.C. § 103(a).

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In light of the above remarks, it is respectfully submitted that the application is in condition for allowance, and an early notice of allowance is requested.

Respectfully submitted,

Date

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Enclosures: Exhibits A-C

CUSTOMER NUMBER: 36802

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